

**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

Mailed:
September 3, 2003
Paper No. 16
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re My Kids Room Inc.

Serial No. 75/742,897

Ezra Sutton for My Kids Room Inc.

Brian D. Brown, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Cissel, Seeherman and Bucher, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

My Kids Room Inc. seeks registration on the Principal Register for the mark MYKIDSROOM for "retail store services in the field of juvenile furniture," in International Class 35.¹

This case is now before the Board on appeal from the final refusal to register based upon Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). The Trademark Examining Attorney has held that applicant's mark, if it is used in

¹ Application Serial No. 75/742,897 was filed on July 1, 1999, based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.

connection with the recited services, so resembles the mark MY ROOM registered for "juvenile bedroom furniture," in International Class 20,² that it would be likely to cause confusion, to cause mistake or to deceive.

Applicant and the Trademark Examining Attorney have fully briefed this appeal, but applicant did not request an oral hearing.

We affirm the refusal to register.

Applicant contends that applicant's services are easily differentiated from registrant's goods; that the two marks create different commercial impressions; and that a review of the federal register shows that the cited mark is weak as applied to juvenile furniture.

By contrast, the Trademark Examining Attorney takes the position that applicant's services are closely related to registrant's goods; that the respective marks create substantially similar overall commercial impressions; and that applicant has failed to demonstrate the weakness of marks such as registrant's in the field of juvenile furniture.

² Registration No. 1,600,909, issued on the Principal Register on June 12, 1990; Section 8 affidavit accepted and Section 15 affidavit acknowledged; renewed.

Our determination under Section 2(d) is based upon an analysis of all of the facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relationship of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Despite applicant's arguments to the contrary, applicant's retail store services in the field of juvenile furniture are closely related to registrant's juvenile bedroom furniture. We must presume that the juvenile furniture to be marketed through applicant's retail store will include bedroom furniture for juveniles. Contrary to applicant's contention, it is well recognized that confusion is likely to occur from the use of the same or similar marks for goods, on the one hand, and for services involving those goods, on the other. See In re Hyper Shoppes (Ohio) Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) [BIGG'S (stylized) for retail grocery and general merchandise store services held likely to be confused with BIGGS and design for furniture]; and Steelcase Inc. v. Steelcare Inc., 219 USPQ 433 (TTAB 1983) [STEELCARE INC.

for refinishing of furniture, office furniture, and machinery held likely to be confused with STEELCASE for office furniture and accessories]. Hence, for purposes of this critical du Pont factor, we find applicant's services to be closely related to registrant's goods.

Moreover, turning to the du Pont factors dealing with the similarity or dissimilarity of established, likely-to-continue trade channels, as well as the conditions under which and buyers to whom sales are made, we must presume that applicant's services and registrant's goods will move through all of the normal channels of trade to all of the usual purchasers of the goods and/or services of the type identified. See Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). Juvenile bedroom furniture could be sold in retail stores offering juvenile furniture, and both the goods and services would be offered to the same class of purchasers, namely, the general public.

Accordingly, then, we turn to the question of whether the respective marks are sufficiently similar that their use in connection with these closely-related goods and services would be likely to cause confusion.

Despite applicant's arguments about the overall dissimilarity of the marks, the Trademark Examining Attorney continues to emphasize the similarity of the marks based upon the dominant MY___ROOM designation found in both of these marks.

Obviously, there are differences between the marks, in that applicant's mark contains the word KIDS - a word not present in the cited mark. However, a determination of likelihood of confusion is not made on a purely mechanical basis, counting the number of words, or even letters, that are the same or different. It is a well-established principle that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark ... provided the ultimate conclusion rests on consideration of the marks in their entireties." In re National Data Corp., 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). The proper test for determining the issue of likelihood of confusion is the similarity of the general commercial impression engendered by the marks - not specific differences one can identify when the marks are subjected to a side-by-side comparison. See Johann Maria

Farina Gegenuber Dem Julichs-Platz v. Chesebrough-Pond, Inc., 470 F.2d 1385, 176 USPQ 199, 200 (CCPA 1972).

As to sound and appearance, these two marks have strong similarities. They both begin with MY and end with ROOM. Yet as noted above, because the additional word KIDS does form part of applicant's mark, we have not failed to take it into consideration. Nonetheless, as applied to retail store services in the field of juvenile (or kids') furniture, it is clearly a descriptive component in applicant's mark, and as such, it has been accorded less source-identifying significance. Simply adding a descriptive term to a registered mark in this fashion is not sufficient to distinguish it from the registrant's mark and thereby obviate a likelihood of confusion. Coca-Cola Bottling Company v. Joseph E. Seagram & Sons, Inc., 526 F.2d 556, 188 USPQ 105 (CCPA 1975). The word KIDS is also less prominent in appearance because it is sandwiched in the middle of applicant's mark.

As to the connotations of the respective marks, we find both marks connote the same thing - namely, a child's bedroom. The logical difference, of course, is that in the case of registrant's mark, it would be seen through the eyes of the child, while in applicant's mark, it would be seen from the parent's perspective.

Despite this nuance, we find that consumers familiar with the registrant's mark MY ROOM used in connection with items of juvenile furniture would be likely to assume, upon seeing the term MYKIDSRoom for a retail establishment selling the same goods, that the goods and services emanate from the same source.

Accordingly, as to the du Pont factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound and connotation, we find that when these marks are considered in their entirety - especially when we take into account the fact that the ordinary consumers to whom items of juvenile furniture are sold have imperfect recollection and will not necessarily be comparing these marks on a side-by-side basis - the marks are quite similar as to overall commercial impression.

Finally, we look into the number and nature of similar marks in use on similar goods and/or services in order to determine how broad a scope of protection to accord to registrant's mark. In this context, we note that applicant has consistently argued as follows:

There are currently at least 13 federal registrations and approved applications in Class 020 and Class 035 which include the term MY and/or ROOM and variations thereof... (Applicant's appeal brief, p. 2).

Third-party registrations are not evidence of commercial use of the marks shown therein, or what happens in the marketplace, or that consumers are familiar with the third-party marks. See Olde Tyme Foods Inc., v. Roundy's Inc., 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992); and Spoons Restaurants Inc. v. Morrison Inc., 23 USPQ2d 1735 (TTAB 1991), aff'd unpub'd, Appeal No. 92-1086 (Fed. Cir. June 5, 1992).

The thirteen third-party registrations assembled by applicant do demonstrate that the word "room" is a suggestive term for furniture. However, the connotations of these marks are distinctly different from the connotation shared by the cited registration and the involved application.³

While all thirteen of these third-party registrations contain the word ROOM, contrary to applicant's representations (e.g., " ... include the term MY and/or ROOM and variations thereof..."), none also contains the word MY. This leads us to the inexorable conclusion that other than the registration cited by the Trademark Examining Attorney,

³ For example, the marks in these registrations are: ROOM GEAR, BEDROOM.COM, ROOM BOOM, ROOM BY WELLIS, THE LOCKER ROOM, ROOM SENSE, BEDROOM EYES, THE CHANGING ROOM, CLEANROOMS, DESIGNER ROOMS, ROOM EXPRESS and ROOMS OF EUROPE.

Further, a thorough examination of the identified goods and recited services shows that none of these registrations makes any specific reference to furniture for juveniles.

applicant was not able to locate a single federal trademark registration for any goods or services in the general field of furniture (and much less as applied specifically to children's furniture) having a combination of the words MY and ROOM within the same mark. Hence, we find that registrant's mark has not been shown to be weak, and as a result should not be accorded a narrowed scope of protection.

In conclusion, we find that applicant's services are closely related to registrant's goods and that the respective marks create substantially similar overall commercial impressions.

Decision: The refusal to register applicant's mark under Section 2(d) of the Act is hereby affirmed.